

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ,
HANNAH PEARCE, MARCUS MARTIN,
NATALIE ROMERO, CHELSEA
ALVARADO, JOHN DOE, and
THOMAS BAKER,

Plaintiffs,

Civil Action No. 3:17-cv-00072-NKM

v.

JASON KESSLER, et al.,

Defendants.

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF
THEIR MOTION FOR EVIDENTIARY SANCTIONS AGAINST
DEFENDANT ELLIOTT KLINE A/K/A ELI MOSLEY**

Pursuant to the Court's Order dated December 10, 2019, ECF No. 603, Plaintiffs respectfully submit this Supplemental Brief in Support of Their Motion for Evidentiary Sanctions against Defendant Elliott Kline a/k/a Eli Mosley, Dec. 6, 2019, ECF No. 601 ("Evidentiary Sanctions Motion"). As requested by the Court, Plaintiffs address the following issues: (1) the steps that Kline has failed to take to purge himself of civil contempt; (2) the status of the third-party discovery vendor's imaging and collection efforts from Kline's social media accounts and electronic devices, including the return of those devices to Kline; and (3) the evidence that Plaintiffs intend to introduce at the upcoming hearing on Monday, December 16, 2019, at 11:00 a.m.

I. Kline's Failure to Purge His Civil Contempt

Plaintiffs are unaware of any further steps that Kline has taken to purge himself of contempt since December 5, 2019, when he produced a single document in response to the Requests for Production and provided deficient responses to Plaintiffs' First Set of Interrogatories. The status of Kline's compliance with discovery remains as described in Part IV of the Evidentiary Sanctions Motion. Kline has still failed to do at least the following:

- Provide complete, non-deficient responses, certified and under oath, to Plaintiffs' First Set of Interrogatories;
- Respond to Plaintiffs' Requests for Production of Documents (in response to which Kline previously produced one document);
- Provide credentials to the following email accounts: elimosley@identityevropa.com (which Kline has stated "was deleted") and eli.r.kline@gmail.com;
- Provide a declaration under oath and under penalty of perjury confirming that Kline lacks credentials for any relevant social media accounts, including Facebook, Twitter, and YouTube, and stating the reasons why he lacks such access;
- Provide his computer (which Kline has stated is "non recoverable") to the vendor; and
- Complete Twitter's online privacy process (which Kline has stated he is unable to do because he registered for each of his numerous Twitter accounts with unknown "burner" email addresses).

See Evidentiary Sanctions Motion 13–17.

Furthermore, Kline has failed to respond to Plaintiffs' Second Set of Interrogatories, which were first served on October 30, 2019, and of which Plaintiffs provided Kline an additional paper copy at the contempt hearing on November 25, 2019. Although the Court did not require Kline to respond to these interrogatories in its November 27, 2019, Order finding Kline in contempt, ECF No. 599, the due date was November 30, 2019, and Kline has not responded despite being provided with multiple copies. It thus appears that Plaintiffs will be required yet again to seek judicial

intervention to remedy Kline's noncompliance, thus wasting more time, effort, and resources on the part of both plaintiffs and the Court.

II. The Status of the Vendor's Imaging and Collection Efforts and Kline's Devices

Plaintiffs address below the status of the third-party discovery vendor's imaging and collection efforts from each of Kline's email addresses, social media accounts, and electronic devices.

A. iPhone 6S

Kline claimed that he submitted his iPhone 6S to the third-party discovery vendor on August 14, 2019. Declaration of Jessica E. Phillips ("Phillips Decl.") ¶ 16 & Ex. K, ECF No. 566 & 566-11. The vendor received the phone on August 27, 2019. Phillips Decl. ¶ 22. The vendor twice asked Kline for his iPhone 6S passcode so the vendor could access the contents of the phone. Phillips Decl. ¶¶ 15, 22 & Exs. J, L, ECF Nos. 566-10, 566-12. Kline did not provide that passcode until October 18, 2019, and even then he only provided it to Plaintiffs, not the vendor. *See* Kline Email to Bloch *et al.*, Oct. 18, 2019 (attached hereto as Exhibit A); *see also* Order for Elliot Kline to Show Cause & Certification 11–12 ¶ 25, Oct. 30, 2019, ECF No. 584. On December 10, 2019, the vendor completed imaging the iPhone and shipped the iPhone back to Kline; the phone was delivered on December 11, 2019. *See* Kim Email to Kline, Dec. 12, 2019 (attached hereto as Exhibit B). The vendor has informed Plaintiffs that it intends to promptly upload the data that it has recovered from Kline's iPhone 6S to a Relativity platform for Kline's electronic review. Pursuant to Judge Hoppe's scheduling order, Kline will then have 21 days to review and "produce any nonprivileged responsive ESI, along with a privilege log fully explaining why any responsive ESI was withheld." Order 1, Nov. 27, 2019, ECF No. 597.

B. Email Addresses and Social Media Accounts

Kline has provided valid credentials for two of his email addresses: eli.f.mosley@gmail.com and deplorabletruth@gmail.com. The vendor has now confirmed access to both Gmail accounts and has contacted Kline to coordinate two-factor authentication so that the vendor can access those Gmail accounts for collection; Kline has not replied to that request. *See* Ex. B. Kline has provided the vendor with credentials for a Gab account, which the vendor has informed Plaintiffs it intends to access and collect shortly. The vendor has been unable to obtain access to accounts for which Kline has provided no credentials, including elimosley@identityevropa.com, eli.r.kline@gmail.com (for which the vendor has repeatedly requested the password, as recently as December 12, 2019), Facebook, and Kline's eight Twitter accounts. *See id.*

C. Walmart Phone and New iPhone

At the Contempt Hearing on November 25, 2019, the Court required Kline to provide to Plaintiffs' counsel his "Walmart phone" and a new iPhone for submission to the third-party discovery vendor. Plaintiffs' counsel took possession of the two phones during the hearing. *See* Declaration of Karen Stemland ¶ 2. Immediately after Kline's civil contempt hearing ended, Plaintiffs' counsel packed the two phones in a UPS envelope with a prepaid UPS label for overnight shipping with a tracking number. *Id.* ¶¶ 2–3. Plaintiffs' counsel took the package with the phones to the nearest UPS drop box for immediate pickup so that the phones could be delivered to the vendor as quickly as possible and to limit the time that the phones were in Plaintiffs' custody. *Id.* ¶¶ 4–5. The phones have not been delivered to the vendor. It appears that the package was either lost or stolen. Plaintiffs' counsel have opened two separate investigations with UPS and the Charlottesville Police Department. *Id.* ¶ 7. Those investigations are ongoing. *Id.*

III. The Upcoming Hearing

At the hearing on December 16, 2019, Plaintiffs intend to present as evidence the exhibits attached to Plaintiffs' prior submissions, including Kline's document production and his responses to Plaintiffs' Interrogatories. *See* Evidentiary Sanctions Motion Ex. G.

In addition, Plaintiffs intend to present the following evidence:

- Email from Elliott Kline to Michael Bloch, Judge Hoppe, *et al.*, October 18, 2019 (attached hereto as Exhibit A);
- Email correspondence between Elliott Kline, Ken Kim, and Michael Bloch, December 2019 (attached hereto as Exhibit B);
- Any subsequent communications from Elliott Kline to Plaintiffs or the vendor, to the extent that such communication occurs prior to the hearing on December 16, 2019; and
- Portions of Mr. Kline's certified deposition, taken on August 7, 2019, and exhibits to the deposition may be offered to rebut or impeach evidence offered by Mr. Kline.

Dated: December 13, 2019

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2019, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I further hereby certify that on December 13, 2019, I also served the following non-ECF participants, via electronic mail, as follows:

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